IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

OP.No. 26384 of 2001(N)

PETITIONER:

STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
FORESTS & WILD LIFE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM – 1.

BY ADV. SPL.GOVERNMENT PLEADER(FORESTS)
SRI. RENJITH THAMPAN

RESPONDENTS:
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1. **VARKEY MATTOM,**
'GREEN VALLEY GARDEN', CHAPPAKKAD,
GOVINDAPURAM P.O., CHITTOOR TALUK,
PALAKKAD.

2. **T.DORAISWAMY, S/O.THANGAVELU, AGED 28 YEARS,**
MOOCHANKUNDIL, GOVINDAPURAM POST,
MUTHALAMADA, CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SMT.ROHINI V.MENON
SRI.M.C.JOHN
SRI.JESWIN P.VARGHESE
SRI.M.C.JOHN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.42884/2001 IN O.P.NO.26384/2001 N

DISMISSED

26/06/2007 **SD/- PIUS C. KURIAKOSE, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER NO.A2-268/98 DTD. 25/10/1999 OF THE D.F.O.NEMMARA.**

EXT.P2: **COPY OF COMMON JUDGEMENT DTD. 5/04/2001 OF THE DISTRICT JUDGE PALAKKAD IN CMA NO.47 & 57/2000.**

EXT.P3: **COPY OF JUDGMENT IN W.A.NO.2309/1998.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF THE JUDGMENT IN C.C.NO.135/03 DTD. 3/03/2007 OF THE JUDICIAL MAGISTRATE OF I CLASS, CHITTUR.**

/TRUE COPY/

P.A. TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

O.P. No. 26384 OF 2001

Dated this the 26th day of June, 2007

J U D G M E N T

The State in the Department of Forests & Wild Life has filed this original petition under Article 227 seeking to quash Ext.P2 common judgment of the District Judge, Palakkad in CMA. Nos. 47 & 57 of 2000 on the files of that Court. The C.M. Appeals were filed by the respondents challenging confiscation orders passed by the Divisional Forest Officer, Nammara.

2. The Forest Range Officer, Kollengode registered a case as OR 1/98 alleging offence under section 27 of the Kerala Forest Act. According to the forest officials, on 3-1-1998 they had noticed that 11 teak trees were cut and removed from the Panimudi 1976 Teak Plantation which is a vested forest. On investigation it was revealed that the illicit timber was transported in two tractors bearing Nos. KL-9B 8739 and KL-9 2781. On 9-1-1998 the Forest Range Officer seized tractor bearing No. KL -9 2781 and was produced before the authorised officer, i.e., the Divisional Forest Officer, Nemmara. The Tractor and trailer KL-9B 8739 were taken into custody by the Range Officer on 22-8-1998 and based on the findings of the investigation report of the Range Officer dated 19-8-1998 the Divisional Forest

Officer was satisfied that a forest offence had been committed in respect of the teak timber and that the tractors, one bullock cart and two bullocks which were seized under section 52(1) of the Kerala Forest Act have been used for the commission of the offence. Show cause notice under section 61A was issued to the respondents regarding the proposed confiscation of the tractors and the bullocks. The contention of the second respondent was that the teak logs were not transported in tractor KL-9B 8739 and that he had given strict instructions to the driver that the vehicle shall not be used for any illicit activity. Confiscation order was passed on the basis that though time was given to the 2nd respondent for proving his innocence, the second respondent did not adduce any evidence for substantiating his innocence. The first respondent was given interim custody of vehicle KL -9 2781 on bank guarantee as per orders passed by this court in O.P. No.23553/99. The first respondent's explanation before the Divisional Forest Officer was that he and his driver had taken sufficient precautionary measures against illicit use of the vehicle. Confiscation order was passed under section 61A in respect of his truck as well as in respect of the bullock cart and the two bullocks finding that they were used for commission of the offence. The learned District Judge

referred to the judgment of this Court in WA. 2309/98A which was an appeal filed by the forest authorities challenging the judgment in O.P. No. 13294/98 and found that the controversy centres around the interpretation of Section 52 of the Kerala Forest Act. According to the learned District Judge, the question for consideration is whether the owner of the vehicle could be asked to produce the tractor long after the commission of the alleged offence. The learned District Judge held that the vehicle could be seized by the forest authorities or police officers if the same was found to be involved in committing the offence and the section does not confer any power on the forest authorities to direct the owner to produce the vehicle long after the offence is allegedly committed. According to the learned District Judge, that was the view taken by this court in O.P. No. 13294 of 1998 which was not interfered with by the Division Bench in WA. No. 2309 of 1998. Coming to the facts of the present case, the learned District Judge noticed that the offence of illicit felling of 11 teak trees was detected on 3-1-98 and the sawn timber was seized on 7-1-1998. The tractor-trailer KL-9B 8739 was taken into custody by the Forest Range Officer, Kollangode on 22-8-1998 and the tractor KL-9 2781 was seized on 9-1-98. When the tractors were seized, they were not carrying any forest timber or

forest produce. According to the learned District Judge in view of the principles laid down in the judgment of this Court in WA. 2309/98, a Forest Officer under section 52 of the Kerala Forest Act, cannot seize the vehicles as those vehicles were not seized along with the forest timber or forest produce since they were not used for the commission of forest offence at the time of seizure. On this reasoning the learned District Judge held that seizure and confiscation of the vehicles are illegal and accordingly set aside the orders and directed release.

3. I have heard the submissions of Sri.M.P.Prakash, Spl. Government Pleader, Sri.M.C.John, counsel for the first respondent and Sri.P.Vijayabhanu, counsel for the second respondent. Sri. M.P.Prakash argued that the learned District Judge was not justified in placing reliance on judgment in WA.2309/98 which is produced as Ext.P3 in the writ petition. What this court had held in Ext.P3 is only that there is no bar in the forest authorities to ask the owner of the vehicle to produce the same in the forest office long after the alleged commission of the offence. The seizure of the vehicles in this case was on 9-1-98 and 22-8-1998 not much longer than the dates of commission of offence. The interpretation given by the learned District Judge to Section 52 that timber and forest produce and vehicles, tools

etc. used for commission of offence have to be seized immediately after the commission of the offence, if accepted, the very purpose of section 52 will be defeated. Counsel referred to the judgment of the Supreme Court in AIR 2000 SC 2729, State of Karnataka v. K.Krishnan, wherein the Supreme Court has observed that the liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. Sri.Prakash argued that after seizing the vehicle and the forest produce the Range Officer produced the same before the Authorized Officer to initiate proceedings under section 61A. Notices under section 61B were given to the affected parties and Ext.P1 order was issued by the Authorized Officer after complying with the provisions contained in Section 61B. The respondents, the owners of the vehicles were given sufficient opportunity under section 61B and there is no procedural irregularity warranting interference under section 61D by the learned District Judge. CMA has been allowed on a nonexistent technical point. Strong reliance was placed by Sri.Prakash on the judgment of the Division Bench of this Court in DFO Kothamangalam v. Sunny Joseph, 2002(3) KLT 641. Reliance was also

placed on the judgment of this court in 1996(1) KLT Short Note Case No. 14, Page 9.

4. Even though the submissions of the Special Government Pleader were resisted by Sri.M.C.John and Sri.P.Vijayabhanu would highlight paragraph 3 of the judgment of Division Bench in State of Kerala v. Margrate Joshy, 1999(3) KLT 359 to argue that the writ petition is not maintainable. I am of the view that the matter requires reconsideration at the hands of the District Judge since it is seen that the learned District Judge had not kept in mind the principles laid down in 2002(3) KLT 641 which was a binding precedent. Under these circumstances allowing the original petition I set aside the impugned order and direct the court below to pass fresh orders in the light of the judicial precedents which may be cited by either sides. Fresh orders as directed above will be passed by the District Judge at earliest.

(PIUS C.KURIAKOSE, JUDGE)

ksv/16208

PIUS C.KURIAKOSE, J

O.P. No. 26384 OF 2001

JUDGMENT

26th June 2007